IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

OP.No. 33410 of 2002(B)

PETITIONER:

M.SWAMIDASAN (RETD. EXECUTIVE ENGINEER, K.S.H.B), F4/I, SATTELLITE TOWNSHIP, PADAMUGAL P.O., KOCHI-682 030.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
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1. THE KERALA STATE HOUSING BOARD, REPRESENTED BY ITS CHAIRMAN, THIRUVANANTHAPURAM.

2. THE SECRETARY, KERALA STATE HOUSING BOARD, THIRUVANANTHAPURAM.

BY ADV. SRI.T.R.HARIKUMAR, SC, KSHB
POOVAPPALLY M.RAMACHANDRAN NAIR,ADL.SC
BY GOVERNMENT PLEADER SMT.N.SUDHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. 33410/2002

ORDER ON CMP. NO.56410/2002 IN IA.NOS.13902/03,14299/04,

IA. 8351/2007 IN OP. NO.33410/2002

DISMISSED

14.09.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CIRCULAR DT. 6.7.99 ISSUED BY 2ND RESPONDENT.

EXT.P2:- COPY OF THE NOTE DT. 14.8.2000 SUBMITTED BY CHIEF ENGINEER TO 2ND RESPONDENT.

EXT.P3:- COPY OF THE LETTER DT. 14.1.98 FROM DY. SUPERINTENDENT OF POLICE VIGILANCE & ANTI CORRUPTION BUREAU, ERNAKULAM TO REGIONAL ENGINEER, KERALA HOUSING BOARD, ERNAKULAM.

EXT.P3(a):- COPY OF THE LETTER FROM REGIONAL ENGINEER H.S.H.BOARD TO TECHNICAL ASST. TO RE, KSHB, KOCHI DT. 25.11.99.

EXT.P4:_ COPY OF THE JUDGMENT DT. 18.2.02 IN OP. NO. 2935/02.

EXT.P5:- COPY OF THE LETTER FROM THE 2ND RESPONDENT TO THE PETITIONER DT. 30.4.02.

EXT.P6:- COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DT. 6.5.02 BEFORE THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE MEMO OF CHARGES WITH STATEMENT OF ALLEGATIONS , DT. 29.1.02.

EXT.P8:- COPY OF THE REPLY DT. 24.6.02 SUBMITTED BY PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE LETTER DT. 22.2.02 FROM EXECUTIVE ENGINEER , KSHB, TO THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE LETTER DT. 1.3.2000 FROM ASST. ENGINEER (STORE) KSHB, KOCHI, TO ASST. EXE. ENGINEER (STORE), K.S.H.B KOCHI.

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OP. NO.33410/2002

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE LETTER NO.B1/4106/75/VOL. II DT. 4.7.200 OF REGIONAL ENGINEER , KOCHI.

EXT.R1(b):- COPY OF THE LETTER OF EXE. ENGINEER DT. 30.3.2000.

EXT.R1(c):- COPY OF THE INSPECTION REPORT OF THE REGIONAL ENGINEER KOCHI DT. 10.7.85.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.33410 OF 2002

Dated this the 14th day of September, 2007

JUDGMENT

Petitioner retired from service on 30.6.2000. On 31.3.2000, i.e., three months before his retirement, he was intimated regarding a liability dating back 1986. That was on the allegation that a flat constructed by the Housing Board could not be handed over in time owing to defective construction and the amount spent for rectification works will have to be shared also by the petitioner. Ext.P2 is the report of the Chief Engineer, which states that it would be wholly unreasonable to take up the ground of rectification after 14 years have elapsed, going by the date of completion of the flat in question. Learned counsel for the petitioner has rightly pointed out that the files of O.P.No. 2528/96, which has been tagged along with this writ petition today, shows that the flat in question was, as a matter of fact, handed over in 1986 itself. Whatever that be, it would be totally unjust and wholly unjustified to mulct responsibility on account of failure of due supervision and thereby transfer the cost of

construction to an engineer after more than a decade of the expenditure, if at all any, of funds for rectification of the defects. That apart, to fix liability on a supervising personnel for rectification, there has to be a clear and categoric finding based on materials that it was out of gross negligence and neglect of duties that the loss has been occurred. For this reason, the recovery on that account does not stand.

2. In so far as another count of recovery which has to be made against 8 employees, even going by the counter affidavit issued in question, it ultimately resulted in no financial loss to the Housing Board. Therefore, there can be no recovery on that issue also.

3. Having found that the recoveries proposed against the petitioner do not stand, it has also to be noticed that Ext.P5 order of recovery is issued only on 30.4.2002, which is more than 20 months after the retirement of the petitioner.

4. Apart from the recoveries, the petitioner has yet another complaint which relates to the refusal of the respondents to release a portion of medical reimbursement as claimed by him. The only stand taken in the counter affidavit is that 75% of the medical reimbursement was already released and regarding the remaining 25%, the Board of Directors of the Housing Board has to take decision. However, in this writ petition filed in 2002, even after five years, no material is placed on record, whereby, the Board of Directors have refused to grant such release to the petitioner. Therefore, it is to be presumed that there is no legitimate intention for the Board to refuse the release of the entire medical reimbursement as claimed .

In the result, the writ petition is disposed of with the following directions:

(i) All recovery proceedings against the petitioner are quashed.

(ii) The entire outstanding amounts, which have been withheld from the DCRG or otherwise, due to the petitioner shall be released within a period of three months from now.

(ii) The entire amount claimed by the petitioner towards medical reimbursement shall also be released.

(iv) All the amounts due to the petitioner in terms of this judgment will carry interest at the rate of 6% per annum from 1.1.2003 till the date of payment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.33410 OF 2002

JUDGMENT

14th SEPTEMBER, 2007.

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